

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE	:	BANKRUPTCY NO. 06-11331
	:	CHAPTER 13
SCOTT C. & SUSAN L. ELY, DEBTORS	:	
	:	
JOSEPH MOBILIA, Movant	:	DOCUMENT NO. 135
vs.	:	
SCOTT C. ELY, SUSAN L. ELY,	:	
RONDA J. WINNECOUR, ESQ.,	:	
TRUSTEE, PRO REALTY, INC., THE	:	
UNITED STATES OF AMERICA,	:	
INTERNAL REVENUE SERVICE,	:	
Respondents	:	

MEMORANDUM AND ORDER

Before the Court is the MOTION OF JOSEPH MOBILIA TO COMPEL PAYMENT OF PROCEEDS OF REAL ESTATE AND RENT. The remaining issue for resolution is entitlement to the \$2,032.24 for rent which was paid to Gary V. Skiba, Esq. at the closing on the sale of Debtors' commercial real estate.

A Motion to Sell the Commercial Real Estate was filed over a year ago, on January 10, 2007. The sale process was delayed while certain objections were resolved. An Order approving the sale was entered on May 9, 2007. The Buyer filed numerous motions to extend the time for closing as it worked to resolve financing issues.

First National Bank of Pennsylvania ("FNB") held the first mortgage on the property and its foreclosure process was delayed by the protracted sale. Joseph Mobilia ("Mobilia") holds a second mortgage which is partially undersecured.

By Order dated July 5, 2007, the buyer was directed to pay rent of \$2,250 per month to Debtors' counsel to be held in escrow pending further Order of Court.

By Order dated September 21, 2007, on the Buyer's motion to extend time for closing, it was Ordered that all rents held by Debtors' counsel were to be paid to FNB

and all future rents were to be paid to FNB. It was understood that reductions in FNB's mortgage balance would serve to protect FNB and also would benefit Mobilia as FNB's mortgage balance was reduced.

By Order dated October 17, 2007, again extending the time for closing, it was again directed that Buyer shall continue payment of rent to FNB.

Time for closing was further extended by Order dated November 14, 2007. Once again, it was directed that the buyer was to pay rent of \$2,250 per month for December 2007 and January 2008 to FNB to be applied on its mortgage balance.

A closing on the sale finally took place in January 2008. At the closing, rather than pay the final rent to FNB and reduce the amount of its payoff, as contemplated by our prior Orders, the closing settlement statement indicates that FNB was paid in full and that the December rent in the amount of \$2,032.34 was disbursed to Gary V. Skiba, Esq. as counsel for Debtors.

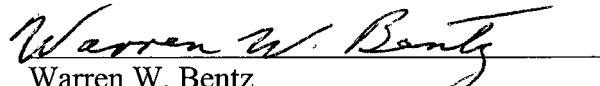
If the rent had been disbursed to FNB as required by the numerous Orders in the case, its payoff would have been reduced, and the net settlement proceeds payable to Mobilia would have increased by the additional amount of \$2,032.24.

Because the rent monies were not disbursed as required by Court Order, Debtors now assert that Mobilia has no interest in rents and joins the Internal Revenue Service in its position that the IRS is entitled to the rent monies on account of its lien.

There is no question that FNB was entitled to the rents had our prior Orders been followed. Mobilia was entitled to rely on those prior Orders entered in the case and disbursement must be made in accordance with the Court Orders which required that all rents collected be paid to FNB.

The amount of the settlement proceeds must be calculated in accordance with prior Orders of Court, which result in a reduction of the payoff amount to FNB, by the rental amount and an increase in the net proceeds of the sale and in the amount payable to Mobilia from the sale. Accordingly, Gary V. Skiba, will be directed to disburse the amount of \$2,032.34 to Mobilia. An appropriate Order will be entered.

Dated: March 25<sup>th</sup>, 2008

  
Warren W. Bentz  
United States Bankruptcy Judge

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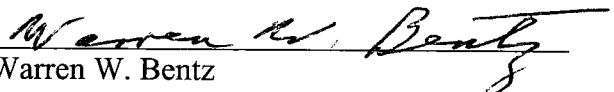
U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
CLERK OF COURT

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UNITED STATES OF AMERICA, :   
INTERNAL REVENUE SERVICE, :   
Respondents :

**ORDER**

This 25<sup>th</sup> day of March, 2008, in accordance with the accompanying  
Memorandum, it shall be and hereby is ORDERED that Gary V. Skiba, Esq. shall  
disburse the rental payments received at closing in the amount of \$2,032.34 to Joseph  
Mobilia.

  
Warren W. Bentz  
United States Bankruptcy Judge

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MAR 25 2008  
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WESTERN DISTRICT OF PENNSYLVANIA